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BRUCE CARPENTER

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

17 Bruce Carpenter,

18 Plaintiff,

19 vs.

20 Air New Zealand Limited, a California
corporation, and Does 1 through 25,
21 inclusive

22 Defendants.
23

Case No. 15-cv-04034-EMC

**STIPULATED PROTECTIVE
ORDER**

24 **INTRODUCTION**

25 This is a personal injury by plaintiff Bruce Carpenter (“plaintiff”) against
26 defendant Air New Zealand Limited (“Air New Zealand”). Plaintiff and Air New
27 Zealand are collectively referred to herein as “the Parties.” Plaintiff alleges that he
28

1 was injured while traveling as a passenger on board Air New Zealand Flight NZ 8
 2 from Auckland to San Francisco on January 8, 2013. Plaintiff alleges that another
 3 passenger fainted and fell across his legs, causing plaintiff to sustain injuries to his
 4 knees.

5 Plaintiffs have propounded discovery to Air New Zealand seeking, among
 6 other things, the passenger and crew manifests for Air New Zealand Flight NZ 8
 7 on January 8, 2013.

8 With respect to the requested manifests, Air New Zealand is prohibited from
 9 producing the manifests in their entirety and without a protective order by 14
 10 C.F.R. Part 243, which prohibits the use or dissemination of manifests for
 11 commercial or marketing purposes and prohibits the release of passenger lists and
 12 contact information to anyone other than U.S. State Department, the National
 13 Transportation Safety Board and the U.S. Department of Transportation. *See* 14
 14 C.F.R. Part 243.9; *compare Wallman v. Tower Air, Inc.*, 189 F.R.D. 566 (N.D. Cal.
 15 1999) (requiring disclosure of manifest information protected by 14 C.F.R. Part
 16 243.9 under Federal Rules of Civil Procedure pursuant to protective order).

17 Air New Zealand is also prohibited from producing the manifests in their
 18 entirety and without a protective order pursuant to the New Zealand Privacy Act of
 19 1993.

20 Air New Zealand has therefore agreed to produce redacted manifests which
 21 show information for: (1) the passenger who allegedly fell on plaintiff; (2) the
 22 passengers seated in plaintiff's row; (3) the passengers seated in the row behind
 23 plaintiff; and (4) the crew working in the economy section of the aircraft, as well
 24 as the crew member who assisted plaintiff following this incident.

25 **PROTECTIVE ORDER**

26 Based upon the foregoing and based upon the stipulation of the parties, and
 27 good cause appearing, IT IS ORDERED as follows:

- 28 1. Any Party may designate items of discovery or other information

1 produced or disclosed to any other Party as confidential and subject to the terms of
 2 this protective order, so long as any such designation is made in good faith. Items,
 3 including documents, tangible things or information, may be designated as
 4 confidential if a Party believes in good faith the information contains trade secrets,
 5 personal information, competitively sensitive information, proprietary or otherwise
 6 confidential information that may be the subject of a protective order under Rule
 7 26 of the Federal Rules of Civil Procedure. All documents designated as
 8 confidential under this Order shall be marked prior to production by placing the
 9 legend “**CONFIDENTIAL**” on each page of the document. Except as otherwise
 10 adjudicated by the Court, all items so marked, and all copies, prints, summaries, or
 11 other reproductions of such information, shall be subject to this Order.

12 2. Unless otherwise directed by the Court or through prior written
 13 agreement of the Parties, and subject to the limitations of Paragraph 1 above,
 14 information and documents subject to this Order shall not be used or shown,
 15 disseminated, copied, or in any way communicated to anyone for any purpose
 16 whatsoever, other than as required for the preparation and trial of this action,
 17 including any appeals. Any copies, excerpts, summaries, analyses, or other
 18 disclosures of, or references to, the substance or contents of any information
 19 designated as confidential shall be protected to the same extent as the underlying
 20 information. Except as provided for below and in the paragraphs that follow, the
 21 Parties shall keep all confidential information and documents strictly confidential
 22 from all persons. The information and documents subject to this Order may be
 23 disclosed only to:

24 (a) The actual named Parties, in the case of individual (non-corporate)
 25 Parties in this action;

26 (b) In the case of corporate Parties in this action, officers, directors,
 27 insurers, in-house counsel and current and former employees of such
 28 corporations deemed reasonably necessary by counsel for the

prosecution, defense, trial or appeal of this action, including employees and former employees of such Parties who testify as pretrial or trial witnesses in connection with this action;

(c) Counsel (and their staff) who represent the Parties in this action;

(d) Experts or consultants retained by counsel, whether or not they are expected to testify;

(e) The Court and court personnel for any purpose the Court finds necessary;

(f) Jurors and court personnel at trial of this case; and

(g) Stenographic and/or videographic personnel hired to record testimony.

3. Disclosures shall be made to such persons identified in Paragraph 2, and such persons may review such disclosures, only as necessary for purposes of litigating this action. The persons identified in Paragraph 2 shall not otherwise disseminate the information and documents subject to this Order, or the substance of such information or documents.

4. Counsel (and counsel's staff) for the receiving Parties will abide by, and be bound by, the provisions of this Protective Order, and will use due care to ensure that the provisions of the Protective Order are known and adhered to by clients, all persons under counsel's supervision and/or control and any person, firm or corporation who has been retained by counsel to act on the receiving Party's behalf in connection with this litigation.

5. With respect to deposition testimony and any document marked as an exhibit thereto, the designation of confidentiality may be made on the record at the time of the deposition, and the designated testimony shall be subject to the full protection of this Order, unless challenged in accordance with the procedures of Paragraph 14. In the case of testimony not so designated during the course of a deposition, counsel may so designate confidential testimony, within thirty (30) days of the deposition testimony and/or exhibits which contain confidential

1 material, in which case the designated testimony and/or exhibits shall be subject to
2 the full protections of this Order. Until the thirty (30) day period for notification
3 has elapsed, deposition transcripts in their entirety and all exhibits are to be
4 considered as confidential and proprietary and subject to the provisions of this
5 Protective Order. If, prior to and/or during the course of a deposition, a witness
6 refuses to be bound by the terms of the Protective Order, the deposition shall be
7 adjourned until application can be made to the Court regarding the deposition.

8 6. Each person given access to documents and information subject to this
9 Order, except those persons identified in paragraph 2(c), (e), and (f) above, must
10 acknowledge this Order and agree, in writing, to be bound by all its terms and
11 conditions. This requirement must be satisfied by obtaining the signature of the
12 person or persons on a copy of the Agreement to Be Bound by Protective Order,
13 attached as Exhibit “A” hereto. By agreeing to be bound by this Order, each
14 person consents to the jurisdiction of this Court over his or her person for any
15 proceedings involving alleged improper disclosure of documents or information
16 protected by this Order. Each Party shall maintain the original signed written
17 agreements and a verified list of all experts, consultants or persons to whom the
18 information and documents or copies thereof were revealed. The list of signatories
19 shall not be revealed to any other person or persons except through court order,
20 which shall only be granted upon a showing of good cause. The Parties agree that a
21 prima facie showing of good cause may be established by evidence that a protected
22 document has been disseminated or used contrary to the terms of this Order (e.g., is
23 in the possession of one not bound by the terms of this Order) and that a reasonable
24 basis exists to find that a particular individual or Party (or agents thereof)
25 improperly used or disseminated the confidential information. The Party that
26 appears to have improperly disseminated the protected document or information
27 shall be required to produce its list of signatories to the Agreement to Be Bound by
28 Protective Confidentiality Order to the Party having claimed confidentiality.

1 7. If a Party intends to submit to the Court a document marked as
2 confidential either before or during trial, that Party or any other Party may request
3 that such document be placed under seal. If the Parties agree, such request shall be
4 presented to the Court as a stipulated motion. Otherwise, the request shall be
5 presented to the Court as a contested motion. Compelling reasons must be shown
6 for the under seal filing. The purpose of this provision is to avoid placing
7 documents under seal unnecessarily.

8 8. Neither this Order nor the designation of any item as confidential shall
9 be construed as an admission that such document, information or testimony would
10 be admissible in evidence in this litigation or in any other proceeding. In addition,
11 this Protective Order does not, of itself, require the production of any information
12 or documents; nor does the existence of this Order constitute an admission or
13 finding that any material marked as confidential is entitled to protection under
14 applicable law.

15 9. Nothing in this Order shall be deemed a waiver of any Party's right to:
16 (a) oppose discovery on grounds other than that the same constitutes or contains
17 confidential information, or (b) object on any ground to the admission in evidence,
18 at the trial of this action, of any confidential information.

19 10. If any Party wishes to petition the Court to modify this Order or its
20 application to certain documents or information, the Party shall follow all
21 applicable Federal Rules of Civil Procedure and Local Rules in petitioning the
22 Court for relief.

23 11. All Parties, within sixty (60) days of the final conclusion of all aspects
24 of this litigation, or a dismissed Party within thirty (30) days of that Party's
25 dismissal with prejudice prior to the final conclusion of all aspects of this
26 litigation, shall:

- 27 (a) Provide to the Party's counsel that originally produced confidential
28 information a copy of all Agreements executed pursuant to paragraph 6,

1 above; and

- 2 (b) Retrieve all such confidential information, including all copies thereof
3 and all documents identifying such confidential information, in that
4 party's possession, custody or control, or in the possession, custody or
5 control of all such persons to whom the confidential information was
6 disseminated pursuant to paragraph 6, and either: 1) return all such
7 confidential information to the Party's counsel that originally produced
8 the confidential information (redacting any work product of the receiving
9 counsel) at the producing counsel's business office or any subsequent
10 address designated by that counsel, or 2) completely destroy all such
11 confidential information; and
- 12 (c) Upon written request, provide a declaration under the penalty of perjury
13 stating that a good faith effort was made to retrieve all such confidential
14 information received and/or disseminated, and that all such confidential
15 information has been either returned or destroyed as indicated in
16 subparagraph (a) and (b) above.

17 12. Up and until the commencement of trial, but not thereafter, the
18 provisions of this Order relating to the confidentiality of protected documents and
19 information shall remain in full force and effect and continue to be binding, except
20 with respect to documents or information that are publicly available. This Court
21 retains jurisdiction over all persons provided access to confidential materials or
22 information for enforcement of the provisions of this Order up and until trial is
23 commenced, but not thereafter.

24 13. Nothing in this Order shall be deemed to preclude any Party from
25 seeking or obtaining, on the appropriate showing, additional protection with
26 respect to the confidentiality of documents or information. Nor shall any provision
27 of this Order be deemed to preclude any Party from challenging the validity of the
28 confidentiality of any materials or information so designated.

1 14. If a Party elects to challenge the designation of confidentiality
2 (“Challenging Party”) of any document, information or testimony, the Challenging
3 Party shall notify the Party who designated the challenged document (“Designating
4 Party”) as confidential of its challenge, in writing. Once the challenge is raised,
5 the Parties shall promptly confer and make reasonable and good faith efforts to
6 resolve the disagreement without intervention by the Court. If they are unable to
7 resolve their differences in good faith within ten (10) days of receipt of the
8 challenge, the Challenging Party shall request a ruling from the Court with respect
9 to the confidential treatment of the information at issue within thirty (30) days of
10 completion of the meet and confer efforts. The Designating Party shall have the
11 burden to prove that the challenged document, information or testimony is entitled
12 to protection under applicable law. Until such time as the Parties’ contentions
13 regarding the confidentiality of documents, information or testimony are fully and
14 finally adjudicated, all documents, testimony or other materials designated by
15 defendants as confidential shall retain their confidential status. Nothing in this
16 agreement shall be deemed to alter, modify or reduce the burden on any party
17 asserting a privilege to make out all elements of the privilege claimed.

18 15. It is recognized by the Parties to this Protective Order that documents
19 or testimony may be designated inadvertently or erroneously as confidential, or
20 that such a designation inadvertently or erroneously may be omitted with respect to
21 documents or information that are entitled to such protection. Any Party to this
22 Protective Order may correct its designation or lack thereof within a reasonable
23 time and shall, at its own expense, furnish to all counsel copies of the documents
24 for which there is a change in designation.

25 16. It is recognized by the Parties that documents or testimony stamped as
26 confidential may be inadvertently disclosed to third parties by a receiving Party.
27 Any receiving Party may correct this inadvertent disclosure without sanction by
28 immediately bringing it to the attention of the producing Party by letter to the

1 producing Party's counsel in which the third Party is identified by name and
2 address. The receiving Party shall further provide an affidavit of counsel
3 confirming that to the best of his or her knowledge the documents and any copies
4 thereof were recovered from the third party.

5 17. All documents or information produced by the Parties prior to the
6 entry of this Protective Order by the Court shall be subject to the provisions of this
7 Protective Order to the same extent as if such Protective Order had been entered by
8 the Court as of the date such documents or information were produced. Producing
9 Parties shall have thirty (30) days from the date of entry of this Order to designate
10 already-produced materials as confidential. However, documents or information
11 obtained through means other than discovery in this action shall not be subject to
12 this Protective Order.

13 18. In the event that any person identified in paragraph 2 above who has
14 been provided access to confidential information produced in this action ("Person
15 Served"): (a) is served with a subpoena in another action, or (b) is served with a
16 demand in another action to which he or she is a party, or (c) is served with any
17 other legal process by one not a Party to this litigation, seeking information that
18 has been produced in this action by another Party and which is subject to this
19 Protective Order, the Person Served shall give prompt written notice of such event
20 to counsel of record for the Party that produced the information. Upon receipt of
21 written notice, the Party which produced the information shall advise the Person
22 Served of that Party's position with respect to the protected information.
23 Thereafter, the Party which produced the information shall assume responsibility
24 for prosecuting any objection to the discovery requests, subpoena or demand, and
25 the Person Served shall cooperate to the extent necessary to preserve the
26 confidentiality of the information. Should the person seeking access to
27 information take action to enforce such discovery requests, subpoena, demand, or
28 other legal process, the Person Served shall set forth in his response the existence

1 of this Stipulated Protective Order. Nothing herein shall be construed as requiring
 2 the receiving Party to challenge or appeal any order requiring production of the
 3 information.

4 19. This Order shall not prejudice the Parties' rights or arguments
 5 regarding whether documents or information used at trial do or do not remain
 6 confidential. Such issues will be taken up as a separate matter upon motion of any
 7 Party.

8 20. It is understood by the Parties that this Stipulated Protective Order
 9 may be executed in one or more counterparts, each of which shall be deemed an
 10 original.

11
 12 Dated: April 5, 2016

CALLAWAY & WOLFF

13
 14
 15 By: /s/ R. Boone Callaway

16 R. BOONE CALLAWAY
 17 NATHANIEL M. LEEDS
 Attorneys for Plaintiff
 BRUCE CARPENTER

18
 19 ATTESTED that all other
 20 signatories listed, and on whose
 21 behalf this document is
 submitted, concur in its content
 and have authorized its filing:

22 Dated: April 5, 2016

23 CONDON & FORSYTH LLP

24
 25 By: /s/ Scott D. Cunningham

26 SCOTT D. CUNNINGHAM
 27 IVY L. NOWINSKI
 Attorneys for Defendant
 AIR NEW ZEALAND LIMITED

1 **APPROVED AS TO FORM:**

2 **EXHIBIT "A"**

3
4 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

5
6 I, the undersigned, acknowledge that I will be receiving documents that have
7 been designated confidential and subject to the terms of the Stipulated Protective
8 Order entered in the above-captioned case. I understand that such confidential
9 material is to be provided to me pursuant to the terms and restrictions of the
10 aforementioned Protective Order and acknowledge that I have been given a copy
11 of and have read that Protective Order. I understand that any use by me of
12 documents or information designated confidential under the Stipulated Protective
13 Order, or any portion or summaries thereof, in any manner contrary to the
14 provisions of the Stipulated Protective Order, will subject me to the sanctions of
15 the Court. I hereby agree to be bound by all of its terms.

16 I declare under penalty of perjury under the laws of the United States that
17 the foregoing is true and correct.

18 Dated this ____ day of _____, _____.
19

20 _____
21 *Signature*

22 _____
23 *Printed Name*

24 _____
25 *Witness*

26 _____
27 *Printed Name*
28

1 **IT IS SO ORDERED.**

2
3
4 Dated: April 6, 2016

